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No. 86-109

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1986

ANDREW DELUCCHI and DOROTHY G. S. DELUCCHI,
Appellants,

v.

THE COUNTY OF SANTA CRUZ and THE CALIFORNIA COASTAL COMMISSION,
Appellees.

MOTION TO DISMISS OR AFFIRM

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MOTION TO DISMISS OR AFFIRM

The California Coastal Commission moves to dismiss or affirm this appeal on the grounds that the judgment rests on independent and adequate state law grounds, and that the federal question is not ripe for decision.

STATEMENT OF FACTS

In 1982 Santa Cruz County adopted a local coastal program (Cal. Pub. Resources Code §§ 30500-525), certified by the California Coastal Commission, in which the County required that persons in the coastal zone obtain coastal permits to build structures such as dwellings and greenhouses. (Jurisdictional Statement ("JS") at A-27.) The appellants, Andrew and Dorothy Delucchi, had entered a Land Conservation contract (Cal. Gov. Code §§ 51200-95) with the County in 1971 under which they obtained a lower tax rate in exchange for agreeing to keep their land in agricultural production. (*Id.* at A-26 to A-29.) The Delucchis claim that this contract also guaranteed that the zoning then in effect would remain in effect for the life of the contract,

and that the County and the Commission violated various federal and State constitutional provisions when they changed the construction of dwellings and greenhouses from a permitted use under the 1971 zoning to a discretionary use under the newly-enacted local coastal program. (*Id.*)

Neither the County nor the Commission have ever denied the Delucchis a discretionary permit to construct dwellings or greenhouses. (Reporter's Transcript (RT) at 76, 83.)

ARGUMENT

I

BECAUSE, AS A MATTER OF STATE CONTRACT LAW, THE COUNTY WAS NOT CONTRACTUALLY BOUND TO FREEZE ZONING, THERE IS NO BASIS FOR A CLAIM THAT CONTRACT RIGHTS HAVE BEEN "TAKEN" OR IMPAIRED

The necessary premise of the Delucchis' action is their claim that the County was contractually bound under the Delucchis' land conservation contract to freeze the 1971 zoning for the life of the contract. The California Court of Appeal, applying traditional principles of state contract law, rejected this premise by finding that the contract did not in fact guarantee the Delucchis that the original zoning would not be changed for the life of the contract. (JS at A-30 to A-33.) Because the County was not contractually bound to freeze zoning and there was consequently no basis upon which to claim that contract rights had been "taken"or impaired, the Court of Appeal's finding provides an independent and adequate non-federal ground upon which to dismiss this appeal. (See *Enterprise Irrigation District v. Farmers Mutual Canal Co.* (1917) 243 U.S. 157, 164.) Moreover, the Court of Appeal found that, even had there been such a zoning contract, it would have constituted an unlawful and unenforceable contracting away of the police power under California law. (JS at A-34 to A-35.) This is an additional independent and adequate non-federal ground upon which to dismiss the appeal.

II

THE APPEAL SHOULD BE DISMISSED BECAUSE THE DELUCCHIS HAVE NEVER BEEN DENIED A COASTAL PERMIT

Since the County's enactment of its local coastal program, the Delucchis have not applied for, and consequently have never been denied, a coastal permit to construct dwellings or greenhouses. (RT at 76, 83.) Their constitutional claims of "taking" are therefore premature. (E.g., *MacDonald, Sommer and Frates v. Yolo County* (1986) 54 U.S.L.W. 4782, 4784-85; *Agins v. City of Tiburon* (1980) 447 U.S. 255, 260.)

CONCLUSION

The California Coastal Commission respectfully requests that the Court dismiss the appeal for lack of jurisdiction and want of a substantial federal question, or alternatively, deny issuance of a writ of certiorari.

Dated: August 18, 1986

Respectfully submitted,

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